

the construction of a gratuitous grant by the state must be restricted to its obvious and plain intent. The grant of a donation flowing from the bounty of the government must be construed most favorably for the government. See Mr. Justice Story's opinion in the case of *Charles River Bridge vs. Warren Bridge*, 11 *Peters*, 590, 597.

If the view of the counsel who urge this construction be correct, then it would follow that if the state had no other claims against Green than the judgments mentioned in the resolutions, that the excess of the credits after satisfying those judgments, would have to be paid him out of the treasury in money. This consequence would be inevitable, though the provision in the resolutions that the defendants should not be relieved from the payment of costs and commissions to the state's attorney, show clearly that in no event did the state purpose to pay anything out of the treasury.

I do not deem it necessary to go into a critical examination of the language of the resolutions, because I think the general intent is sufficiently obvious to make this unnecessary, but I think it quite apparent that when the legislature spoke of crediting Wm. S. Green with commissions which had been withheld from him because of his delay in paying the money due from him into the treasury within the time limited by law, they never supposed they were directing him to be credited with commissions on moneys which he not only had delayed to pay, but which he has not paid to this day. The law says, that if the county clerks do not pay into the treasury within a limited time the money received by them for the state, they shall not be allowed the commissions to which otherwise they would be entitled. In other words, their commissions shall be withheld. Mr. Green had omitted to pay in time, and when he came to pay subsequently, the treasurer withheld the commission. He withheld it because of the *delay* in making the payment, and it was the commissions thus withheld which the legislature intended should be credited, and in my opinion, to push the resolution further, and construe it to mean that credits were to be given upon moneys which never had been paid at all,